

1 Kevin J. Curtis, WSBA No. 12085  
2 WINSTON & CASHATT, LAWYERS, a  
3 Professional Service Corporation  
4 601 W. Riverside, Ste. 1900  
5 Spokane, WA 99201  
6 Telephone: (509) 838-6131

7 Charles L. Babcock IV (*admitted pro hac vice*)

8 cbabcock@jw.com

9 Texas Bar No. 01479500

10 William J. Stowe (*admitted pro hac vice*)

11 wstowe@jw.com

12 Texas Bar No. 24075124

13 JACKSON WALKER L.L.P.

14 1401 McKinney Street

15 Suite 1900

16 Houston, Texas 77010

17 (713) 752-4360 (telephone)

18 (713) 308-4116 (facsimile)

19 Attorneys for Defendants International Data  
20 Group, Inc., CXO Media, Inc. and Steve Ragan

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23  
24 UNITED STATES DISTRICT COURT  
25 EASTERN DISTRICT OF WASHINGTON

26 RIVER CITY MEDIA, LLC, a Wyoming  
27 limited liability company, MARK  
28 FERRIS, an individual, MATT FERRIS,  
29 an individual, and AMBER PAUL, an  
30 individual,

31 No. 2:17-cv-105-SAB

32 DEFENDANTS CXO MEDIA, INC.'S,  
33 RESPONSE TO PLAINTIFFS' MOTION  
34 TO EXTEND AMENDED PLEADINGS  
35 DEADLINE

36 Plaintiffs,

37 vs.  
38  
39 Without Oral Argument  
40 Date: March 12, 2018  
41 Spokane, Washington

42 CXO MEDIA, INC.'S, RESPONSE TO PLAINTIFFS'  
43 MOTION TO EXTEND AMENDED PLEADINGS  
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53 Spokane, Washington 99201  
54 (509) 838-6131

1 KROMTECH ALLIANCE  
2 CORPORATION, a German corporation,  
3 CHRIS VICKERY, an individual, CXO  
4 MEDIA, INC., a Massachusetts  
corporation, INTERNATIONAL DATA  
5 GROUP, INC., a Massachusetts  
corporation, and STEVE RAGAN, an  
individual, and DOES 1-50,

6  
7 Defendants.  
8

9 Defendants CXO Media, Inc. ("CXO") respectfully submits this Response to  
10 Plaintiffs' Motion to Extend Amended Pleadings Deadline (ECF 81) ("Motion") as  
11 follows:

12  
13 **Summary**

14 Plaintiffs seek an extension because they want to contest objections that CXO and  
15 International Data Group, Inc. ("IDG") served on Plaintiff all the way back on November  
16 28, 2017, 73 days ago. It is completely misleading for Plaintiffs to suggest that their  
17 Motion is filed because of a few documents produced on February 6, 2018 pursuant to the  
18 protective order entered by the Court the same day, February 6, 2018. Specifically, all  
19 the way back on November 28, 2017, IDG and CXO objected that certain jurisdictional  
20 discovery requests were outside the scope of jurisdictional discovery because certain  
21 requests sought information "regarding articles having nothing to do with this lawsuit"  
22 and hence were "directed to general jurisdiction even though (1) the Court's Order (ECF  
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1 No. 60 at 4) specifically states that ‘Plaintiffs are only relying on specific jurisdiction’;  
2 (2) Plaintiffs’ counsel expressly disclaimed general jurisdiction at the hearing on CXO’s  
3 Motion to Dismiss; and (3) Plaintiffs do not allege general jurisdiction in their  
4 Complaint.”<sup>1</sup> For example, Plaintiffs asked in an interrogatory the number of views from  
5 the United States and from Washington of all articles written by Steve Ragan, not just the  
6 specific Ragan article at issue (the “Ragan Article”) that they were actually suing on.  
7 CXO objected that, as written, this sought “articles having nothing to do with this  
8 lawsuit” and hence for those articles would go to general jurisdiction, which was  
9 objectionable for the reasons stated above. *See* Ex. 1, CXO Response to Interrog. No. 5.

10 **Importantly, after objecting on this ground, CXO stated that should a protective  
11 order be entered, it would provide the requested information for the specific Ragan  
12 Article that Plaintiffs sued on (rather than the other articles having nothing to do  
13 with the suit):** “Should the parties enter into an agreement regarding treatment of  
14 confidential information, Defendant will supplement with appropriately-designated  
15 information consistent with its objections – that is, the number of views of the Ragan  
16 Article by visitors from Washington State.” *Id.* at Response to Interrog. No. 5(b). CXO  
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23 <sup>1</sup> Ex. 1, CXO’s Response to RFP Nos. 4, 5, 6; *see also* Ex. 2, IDG’s Response to RFP  
24 Nos. 5, 6, 7 (all served on November 28, 2017).

1 made these objections on November 28, 2017. It provided this information when the  
2 Court issued the protective order. Now, 73 days after Plaintiffs received these objections,  
3 and long after the jurisdictional discovery period closed on January 31, 2018, Plaintiffs  
4 seek an extension of the amendment deadline a mere 5 days before the deadline.  
5

6 To call this delay unreasonable would be putting it lightly. Plaintiffs knew of  
7 CXO's and IDG's position since November 28, 2017. Plaintiffs were given ample time  
8 to conduct jurisdictional discovery and to file any motions. They never filed any motion  
9 on CXO's or IDG's objections, which they received back on November 28, 2017 (along  
10 with documents that CXO and IDG produced back on November 28, 2017, something  
11 Plaintiffs omit in their Motion). Once the Court entered the protective order, CXO  
12 produced the very confidential information that it said it would produce, such as the  
13 revenue from the Ragan Article generated by views from Washington. *Plaintiffs are not*  
14 *complaining about that production. What they are complaining about is something*  
15 *they have known about since November 28, 2017 – that CXO is not producing*  
16 *information regarding general jurisdiction (e.g., revenue from articles having nothing*  
17 *to do with this lawsuit).*<sup>2</sup>

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22 <sup>2</sup> Specific, or “case-linked” jurisdiction – unlike general jurisdiction – depends on  
23 contacts giving rise to the very claims at issue. “What is needed . . . is a connection  
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## Argument

“When a party seeks to continue the dates set by the court, it must first show ‘good cause’ for modification of the order under Rule 16(b).” *Zone Sports Ctr., LLC v. Rodriguez*, No. 1:11-CV-00622-SKO, 2016 WL 224093, at \*4 (E.D. Cal. Jan. 19, 2016) (citing *Zivkovic v. So. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)). “The good cause inquiry primarily considers the diligence of the party seeking amendment.” *Id.* (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992)); *cf. Curry v. Tri-State Mem'l Hosp.*, No. 14-CV-00336-JLQ, 2017 WL 3614531, at \*2 (E.D. Wash. May 24, 2017) (“Additionally, Defendant made no showing of good cause for the belated filing *nor address the fact counsel was aware of the claim of privilege months before the Motion was filed.*”) (emphasis added).

“In these days of heavy caseloads, trial courts in both the federal and state systems routinely set schedules and establish deadlines to foster the efficient treatment and resolution of cases.” *Wong v. Regents of University of California*, 410 F.3d 1052, 1060 (9th Cir. 2005).

between the forum and the specific claims at issue.” *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1781 (2017) (emphasis added).

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1       This case has been on file for almost a year. On November 28, 2017, CXO and  
2 IDG served jurisdictional discovery responses. *See* Stowe Decl. ¶ 3. These included not  
3 only written responses but also documents. *Id.* CXO and IDG specifically included  
4 objections that certain requests sought information relating to general jurisdiction, such as  
5 requests for information regarding articles and revenue having nothing to do with the  
6 Ragan Article, which is what Plaintiffs are suing over. Ex. 1, CXO's Response to RFP  
7 Nos. 4, 5, 6; *see also* Ex. 2, IDG's Response to RFP Nos. 5, 6, 7. The discovery requests  
8 that went into general jurisdiction were objectionable not only because Plaintiffs were  
9 only alleging specific jurisdiction, but because Plaintiffs' counsel admitted this at the  
10 hearing and even the Court, when ordering jurisdictional discovery, noted that "Plaintiffs  
11 are only relying on specific jurisdiction." Order (ECF No. 60 at 4). Indeed, at the  
12 hearing, the Court questioned Plaintiffs' counsel on this and counsel confirmed that  
13 Plaintiffs are only proceeding under specific jurisdiction:  
14  
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16       THE COURT: And you're proceeding only under specific jurisdiction --

17       MR. NETA: That's correct, Your Honor.

18       THE COURT: -- for all of the defendants, is my impression, after reading all  
19 the briefing.

20       MR. NETA: Precisely. . . .

21       Ex. 3, Aug. 16, 2017 Hearing Tr. at 49:7-12. Yet Plaintiffs included *general*  
22 jurisdictional requests, such as "[t]he number of views by visitors in the state of  
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(509) 838-6131

1 Washington" for articles *other than* the Ragan Article at issue,<sup>3</sup> as well as documents  
2 "related to CXO Media's income derived from advertising on its websites to Washington  
3 state residents," again even if completely unconnected to the Ragan Article.<sup>4</sup>

5 Plaintiffs utterly fail to show good cause for their unreasonable delay in filing a  
6 motion for an extension predicated on something they have known about since November  
7 28, 2017. In fact, during a telephone conference on January 2, 2018, CXO's counsel  
8 reiterated to Plaintiffs' counsel its objection to the discovery requests regarding general  
9 jurisdiction. *See id.* ¶ 5. Yet still nothing from Plaintiffs. Plaintiffs sat on their hands  
10 and – after the close of jurisdictional discovery, and just days before the amended  
11 pleading deadline – decided to seek an extension. That is not diligence. That is not good  
12 cause. Lawsuits cost money. **Long lawsuits cost even more.** CXO and IDG will be  
13 prejudiced by a further delay of this case because they will have to continue spending  
14 money when they should be dismissed – something they have already had to wait to  
15 renew until after the close of jurisdictional discovery. This Court generously gave  
16 Plaintiffs plenty of time to conduct jurisdictional discovery and resolve any issues  
17 therein. Plaintiffs waited until long after the close of jurisdictional discovery to file a  
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23 <sup>3</sup> *See* Ex. 1 at Interrog. No. 5(b).

24 <sup>4</sup> *See id.* at RFP No. 6.

1 motion regarding this. Plaintiffs are not entitled to an extension of the amended pleading  
2 deadline because they have not shown good cause.

3 Finally, Plaintiffs did not confer with at least one other Defendant – Kromtech  
4 Alliance Corporation – before filing their Motions. Further, Plaintiffs’ Motion and  
5 supporting declaration includes the blatantly false statement that Plaintiffs’ counsel  
6 conferred with IDG and CXO’s counsel on February 8, 2018 regarding Plaintiffs’  
7 intention to file a separate “Motion to Expedite.” *See* Neta Decl. (ECF 80) ¶ 15. That is  
8 false. *See* Stowe Decl. ¶ 7. Plaintiffs’ counsel never even mentioned a Motion to  
9 Expedite.

12 **Conclusion and Prayer**

13 For the foregoing reasons, the Court should deny Plaintiffs’ Motion for Extension  
14 and grant CXO Media, Inc. such other relief to which it is entitled.

16 Respectfully submitted this 9<sup>th</sup> day of February, 2018.

17 s/Kevin J. Curtis, WSBA No. 12085  
18 WINSTON & CASHATT, LAWYERS  
19 601 W. Riverside, Ste. 1900  
20 Spokane, WA 99201  
21 (509) 838-6131  
Facsimile: (509) 838-1416  
E-mail Address: [kjc@winstoncashatt.com](mailto:kjc@winstoncashatt.com)

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23  
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*Winston & Cashatt*  
A PROFESSIONAL SERVICE CORPORATION  
1900 Bank of America Financial Center  
601 West Riverside  
Spokane, Washington 99201  
(509) 838-6131

Charles L. Babcock IV (*admitted pro hac vice*)  
cbabcock@jw.com  
Texas Bar No. 01479500  
William J. Stowe (*admitted pro hac vice*)  
wstowe@jw.com  
Texas Bar No. 24075124  
JACKSON WALKER L.L.P.  
1401 McKinney Street  
Suite 1900  
Houston, Texas 77010  
(713) 752-4360 (telephone)  
(713) 308-4116 (facsimile)

Attorneys for Defendants International Data Group, Inc., CXO Media, Inc. and Steve Ragan

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A PROFESSIONAL SERVICE CORPORATION  
1900 Bank of America Financial Center  
601 West Riverside  
Spokane, Washington 99201  
(509) 638-6131

1 I hereby certify that on February 9, 2018, I electronically filed the foregoing with  
2 the Clerk of the Court using the CM/ECF System which will send notification of such  
3 filing to the following:  
4

5 Jason E. Bernstein - [jake@newmanlaw.com](mailto:jake@newmanlaw.com)  
6 Leeor Neta (*admitted pro hac vice*) - [leeor@newmanlaw.com](mailto:leeor@newmanlaw.com)

7 Attorneys for Plaintiffs  
8

9 Christopher B. Durbin - [cdurbin@cooley.com](mailto:cdurbin@cooley.com)  
10 Matthew D. Brown (*admitted pro hac vice*) - [brownmd@cooley.com](mailto:brownmd@cooley.com)  
11 Amy M. Smith (*admitted pro hac vice*) - [amsmith@cooley.com](mailto:amsmith@cooley.com)

12 Attorneys for Defendant Kromtech Alliance Corporation  
13

14 Edward C. Chung - [Echung@cmmlawfirm.com](mailto:Echung@cmmlawfirm.com)  
15 Attorney for Defendant Chris Vickery  
16

17 s/Kevin J. Curtis, WSBA No. 12085  
18 WINSTON & CASHATT, LAWYERS  
19 Attorneys for Defendants International Data  
20 Group, Inc., CXO Media, Inc. and Steve Ragan  
21 601 W. Riverside, Ste. 1900  
22 Spokane, WA 99201  
23 (509) 838-6131  
24 Facsimile: (509) 838-1416  
E-mail Address: [kjc@winstoncashatt.com](mailto:kjc@winstoncashatt.com)

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*Winston & Cashatt*  
A PROFESSIONAL SERVICE CORPORATION  
1900 Bank of America Financial Center  
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(509) 838-6131